

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6094

PETITION OF KENNETH C. MACKEL
(Hearing held September 28, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, October 21, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.326(a) and 59-C-1.326(a)(2)(C). The petitioner proposes the construction of an accessory structure (detached garage) that requires a variance of twelve (12) feet as it is with three (3) feet of the side lot line and a variance to be located in the side yard. The required side lot line setback is fifteen (15) feet.

The subject property is Lot 1, Block A, Phillips Oak Subdivision, located at 15825 Phillips Oak Drive, Spencerville, Maryland, 20868 in the RE-1 Zone (Tax Account No. 03121996).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 22 x 30 foot detached garage.
2. The petitioner testified that his property is an irregularly shaped lot, with a shallow and narrow rear yard. The petitioner testified that an existing 100-year-old southern red oak tree is located in the northern section of the property and that the tree would require removal if new construction were built in this area. The petitioner testified that currently a homeowner's association easement exists that requires the care and maintenance of this tree. The subject property is 40,738 square feet. See, Exhibit No. 13(a) [site plan with setbacks].
3. The petitioner testified that new construction can not built at the rear of the house because of an existing deck and that new construction elsewhere on the property would impact the view for the neighboring property owners. The petitioner testified that the property has an

existing two-car garage and that the proposed structure would provide additional covered parking on the property.

FINDINGS OF THE BOARD

Based upon the petitioner's binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that while the shape of the petitioner's property is distinctive, any "uniqueness" or "peculiarity" caused by such narrowness does not constitute "conditions peculiar to a specific parcel of property" of such a severity that the Board may grant the requested variance. The Board notes that the property meets the minimum lot size for the zone, has existing covered parking, and that new construction can be located elsewhere on the lot without the need for a variance. See, Exhibit No. 9 [zoning vicinity map].

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of twelve (12) feet from the required fifteen (15) foot side lot line setback and to permit the construction of an accessory structure/detached garage in the side yard are denied.

The Board adopted the following Resolution:

Board members Louise L. Mayer and Wendell M. Holloway were necessary absent and did not participate in this Resolution. On a motion by Donna L. Barron, seconded Angelo M. Caputo and with Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 21st day of October, 2005.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.